

- (4) **Number of Copies.** An original and 3 copies of each informal brief must be filed with the court and one copy must be served on each party.

Practice Notes

Reply Briefs Due at Least 3 Days Before Oral Argument; Expedited Service. The reply brief of the appellant (or cross-appellant in a cross-appeal) is due to be served and filed within 14 days of the preceding brief. The 3-day provision of Federal Rule of Appellate Procedure 31(a)(1) means that the reply period is automatically shortened if the end of the 14-day period is within 3 days of oral argument. The briefing schedule will not ordinarily run so close to oral argument, but if it does - because of extensions or otherwise - the reply brief must be filed early. Federal Circuit Rule 31(a)(5) provides that when that happens, a reply brief filed within 4 business days of oral argument must be filed and served in an expedited manner. Regular mail would be inappropriate.

Consolidated Appeals. In consolidated appeals in which more than one appellant filed a notice of appeal, the opening brief of all appellants will be governed by the docketing date of the last filed appeal.

Consolidated Cross-Appeals. In consolidated cross-appeals, the briefing schedule is computed according to the docketing date of the first appeal.

Rule 32. Form of Briefs, Appendices, and Other Papers

(a) Form of a Brief.

(1) Reproduction.

- (A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.
- (B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.
- (C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(2) Cover. Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; and any reply brief, gray. The front cover of a brief must contain:

- (A) the number of the case centered at the top;
- (B) the name of the court;
- (C) the title of the case (see Rule 12(a));
- (D) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court, agency, or board below;

Rule 32. Form of Briefs, Appendices, and Other Papers

(a) Nonconforming Brief. The clerk may refuse to file any brief that has not been printed or bound in conformity with Federal Rule of Appellate Procedure 32.

(b) Exclusion from Type-Volume Limitation. In addition to the items listed in Federal Rule of Appellate Procedure 32(a)(7)(B)(iii) that are not counted in the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B), the following items do not count toward that limitation:

- (1) the certificate of interest;
- (2) the statement of related cases; and
- (3) the addendum in an initial brief of an appellant or petitioner.

(c) Informal Brief. An informal brief must be prepared on a form provided by the clerk. The form contains instructions for preparing and filing an informal brief. An informal brief should be typewritten, but block printing or, as a last resort, legible handwriting is permitted. An informal brief including continuation pages must not exceed 30 pages of typewritten double-spaced text or its equivalent.

(d) Form of Appendix. Pages in an appendix - even when filing a combined brief and appendix - may be printed on both sides. To the extent possible, the court encourages this.

FEDERAL RULES OF APPELLATE PROCEDURE

- (E) the title of the brief, identifying the party or parties for whom the brief is filed; and
 - (F) the name, office address, and telephone number of counsel representing the party for whom the brief is filed.
- (3) **Binding.** The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.
- (4) **Paper Size, Line Spacing, and Margins.** The brief must be on 8 1/2 by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.
- (5) **Typeface.** Either a proportionally spaced or a monospaced face may be used.
- (A) A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger.
 - (B) A monospaced face may not contain more than 10 1/2 characters per inch.
- (6) **Type Styles.** A brief must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.
- (7) **Length.**
- (A) **Page limitation.** A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B) and (C).
 - (B) **Type-volume limitation.**
 - (i) A principal brief is acceptable if:
 - it contains no more than 14,000 words;
 - or it uses a monospaced face and contains no more than 1,300 lines of text.
 - (ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 32(a)(7)(B)(i).
 - (iii) Headings, footnotes, and quotations count toward the word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any

FEDERAL CIRCUIT RULE

(e) Filing Corresponding Brief on Compact Disc. In addition to the filing of a paper brief, a party may file a corresponding brief contained on a compact disc - read only memory (CD-ROM), subject to the following requirements.

- (1) **Consent; Motion.** Within 14 days of docketing an appeal, a party intending to file a corresponding brief must ascertain whether any other party consents or objects. If the other parties consent, the filing party must promptly file with the court notice of intent to file a corresponding brief. If any other party does not consent, the party seeking to file a corresponding brief must promptly file a motion for leave with the court. If no response is filed within 7 days, the clerk will grant the motion for leave to file a corresponding brief. The court will deny a motion for leave to file a corresponding brief only if an opposing party demonstrates substantial prejudice.
- (2) **Content.** A corresponding brief must be identical in content to the paper brief. A corresponding brief may provide hypertext links to the complete versions of material that was part of the record below. Hypertext links to other material must be confined to materials such as cases, statutes, treatises, law review articles, and similar authorities. A corresponding brief must be self-contained and static.
- (3) **Statement Concerning Instructions and Viruses.** A corresponding brief must be accompanied by a statement, preferably within or attached to the packaging, that:
 - (A) sets forth the instructions for viewing the brief and the minimum equipment required for viewing; and
 - (B) verifies the absence of computer viruses and lists the software used to ensure that the brief is virus-free.
- (4) **Time for Filing.** A corresponding brief, if any, must be filed no later than the time for filing the joint appendix.
- (5) **Filing and Service.** Except for the time of filing, a corresponding brief must be filed and served in the same manner and the same number of copies as the paper brief.
- (6) **Single CD-ROM.** All parties to an appeal who intend to file a corresponding CD-ROM brief are encouraged to cooperate in placing all such briefs on a single CD-ROM.

FEDERAL RULES OF APPELLATE PROCEDURE

addendum containing statutes, rules or regulations, and any certificates of counsel do not count toward the limitation.

- (C) **Certificate of compliance.** A brief submitted under Rule 32(a)(7)(B) must include a certificate by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state either:
- (i) the number of words in the brief; or
 - (ii) the number of lines of monospaced type in the brief.
- (b) **Form of an Appendix.** An appendix must comply with Rule 32(a)(1), (2), (3), and (4), with the following exceptions:
- (1) The cover of a separately bound appendix must be white.
 - (2) An appendix may include a legible photocopy of any document found in the record or of a printed judicial or agency decision.
 - (3) When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8 1/2 by 11 inches, and need not lie reasonably flat when opened.
- (c) **Form of Other Papers.**
- (1) **Motion.** The form of a motion is governed by Rule 27(d).
 - (2) **Other Papers.** Any other paper, including a petition for rehearing and a petition for rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:
 - (A) a cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2); and
 - (B) Rule 32(a)(7) does not apply.
- (d) **Local Variation.** Every court of appeals must accept documents that comply with the form requirements of this rule. By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule.

FEDERAL CIRCUIT RULE

- (7) **Table of Contents.** Parties filing a corresponding brief are encouraged to include a table of contents with links to all of the items required in a joint appendix under Federal Rule of Appellate Procedure 30 and Federal Circuit Rule 30 and to all other parts of the record contained on the corresponding brief.
 - (8) **Labeling.** A label with the caption of the case, the number of the case, and the types of briefs included on the CD-ROM must be included on both the packaging and the CD-ROM
- (f) **Form of Other Papers.** Except as otherwise specifically provided in these Federal Circuit Rules, all papers, including petitions, motions, responses, and replies, must conform to the requirements of Federal Rule of Appellate Procedure 32(a)(1), (4), (5), and (6).

Practice Notes

Preferred Cover. In addition to the requirements of Federal Rule of Appellate Procedure 32(a)(2)(D), the court encourages inclusion on the cover of the name of the judge, when applicable, from whose judgement appeal is taken.

Preferred Binding. The court prefers that a brief be securely bound along the left-hand margin to ensure that the bound copy will not loosen or fall apart; that a brief lie flat when open; that a ring-type binding, plastic or metal, or a binding that protrudes from the front and back covers (e.g., VeloBind) not be used; and that any externally positioned staple be covered with tape.

Print Size of Briefs. Counsel should avoid photoreproduction that reduces the print size of the original smaller than the size required by Federal Rule of Appellate Procedure 32.

Brief Covers in Cross-Appeals. The color of the cover of the cross-appellant's principal brief is red. The color of the covers of appellant's and cross-appellant's reply briefs is gray.

Copies of Patent Documents. Oversize patent documents reproduced in a brief or appendix should be photoreduced to 8 1/2 by 11 inches if readability can be maintained; otherwise, they should be folded and bound so they do not protrude from the covers of the brief or appendix.

Errata; Corrections to be Made by Counsel. A brief may not be corrected merely by appending an errata sheet. Corrections, which must be limited to nonsubstantive matters, must be made by counsel using suitable means directly in the briefs on file with the clerk. As a last resort, briefs may be replaced. Corrected or replacement briefs must be re-served, but the time to file a brief in response to a corrected or replaced brief runs from service of the original brief. A corrected brief should so indicate on the cover.

Testimony in the Appendix. To reduce bulk in the appendix, the use of condensed, columnar transcripts of testimony is encouraged.

Length of Briefs in Cross Appeals. For purposes of Fed. R. App. P. 32(a)(7), the first and second briefs in a case with a cross appeal are considered principal briefs and the third and fourth briefs are considered reply briefs.

Certificate of Compliance. When filing a certificate of compliance with respect to the word count or line count of a brief, Fed. R. App. P. 32(a)(7)(C), a party should be aware that some software programs do not automatically include footnotes. When certain text is marked for word count or line count purposes, a party may need to separately mark text in footnotes and include those words or lines in the certified count. It is the responsibility of the party to ensure that its certificate of compliance is accurate.

Rule 33. Appeal Conferences

The court may direct the attorneys — and, when appropriate, the parties — to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A judge or other person designated by the court may preside over the conference, which may be conducted in person or by telephone. Before a settlement conference, the attorneys must consult with their clients and obtain as much authority as feasible to settle the case. The court may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement.

Rule 33. Appeal Conferences

(a) Settlement Discussion; Joint Statement of Compliance or Agreement to Dismiss.

- (1) When all the parties are represented by counsel, within 7 days after the principal briefs (appellant's brief; appellee's or cross-appellant's brief; and appellant's reply brief in a cross-appeal) are served and filed, the parties through counsel must discuss settlement in appeals under 28 U.S.C. §§ 1292(c)(1)-(2); 1295(a)(1); 1295(a)(4)(A) [with respect to patent interferences only]; 1295(a)(4)(B) [with respect to inter partes proceedings only]; 1295(a)(4)(C) [with respect to civil actions under 35 U.S.C. § 146 only]; and 1295(a)(6).
- (2) No later than the time for filing a separate appendix under Federal Circuit Rule 30(a)(4), the parties must file one - and only one - of either of the following: